



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

October 13, 2003

Mr. David K. Walker
County Attorney
Montgomery County
210 West Davis, Suite 400
Conroe, Texas 77301

OR2003-7250

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189239.

The Montgomery County Sheriff's Department (the "department") received a request for "all records including, but not limited to: medical, mental health, disciplinary, all records starting 1995 for each incarceration to current" on a named individual. You claim that most of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses statutory confidentiality provisions. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). This office has concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S.,

ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). The legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. Exhibits C-1, C-3, and C-4 relate to juvenile conduct that occurred before January 1, 1996. These records, therefore, must be withheld under section 552.101 in conjunction with section 51.14 of the Family Code.¹

We also note that Exhibit C-17 is subject to section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. This section provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Section 51.02(2)(A) of the Family Code defines "child" for purposes of section 58.007 as a "person who is . . . ten years of age or older and under 17 years of age." Exhibit C-17 involves allegations of juvenile conduct that violates penal statutes and that occurred after September 1, 1997. Because none of the exceptions in section 58.007 appear to apply, this exhibit is confidential in its entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

¹We note that under section 552.023 of the government code a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. Access to juvenile law enforcement records related to conduct which occurred before January 1, 1996 is governed by section 51.14 and its release provisions, not section 552.023. Thus, the requestor does not have a special right of access to the responsive information under section 552.023.

You argue that Exhibit C-2 is excepted under section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Exhibit C-2 does not involve an investigation of suspected abuse or neglect of a child made under chapter 261. Therefore, the department may not withhold Exhibit C-2 under section 261.201 of the Family Code.

You state that Exhibits C-2, C-5, C-6, C-7, C-8, C-13, C-14, C-15, and C-16 are excepted from disclosure under section 552.108 of the Government Code. This section provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. You state that the exhibits you seek to withhold under section 552.108 are reports of cases that "did not result in a conviction or deferred adjudication." Based on your representation and

our review of the information you wish to withhold, we find that section 552.108(a)(2) is applicable to these exhibits.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d 177. Thus, the department must release the types of information that are considered to be front page report information, including a detailed description of the offenses, regardless of whether such information is actually located on the front page of an offense report. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(2) authorizes the department to withhold the remaining information in Exhibits C-2, C-5, C-6, C-7, C-8, C-13, C-14, C-15, and C-16, it may choose to release all or part of these exhibits that is not otherwise confidential by law. See Gov't Code § 552.007.

Finally, you state that the remaining information, Exhibits C-9, C-10, C-11, and C-12, is excepted from disclosure under section 552.108(a)(3) of the Government Code. Section 552.108(a)(3) provides that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . it is information relating to a threat against a peace officer collected or disseminated under Section 411.048[.]" Gov't Code § 552.108(a)(3). We must note, however, that section 552.108(a)(3) is inapplicable in this instance as the submitted information does not relate to a threat against a police officer. See Gov't Code § 552.108(a)(3). As you claim no other exception to disclosure with respect to this information, we conclude that Exhibits C-9, C-10, C-11, and C-12 must be released to the requestor.

In summary, Exhibits C-1, C-3, and C-4 must be withheld under section 552.101 in conjunction with former section 51.14 of the Family Code. The department must withhold Exhibit C-17 under section 58.007 of the Family Code. Except for basic information, which must be released, the department may withhold Exhibits C-2, C-5, C-6, C-7, C-8, C-13, C-14, C-15, and C-16 under section 552.108(a)(2). The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long, sweeping horizontal line extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/sdk

Ref: ID# 189239

Enc. Submitted documents

c: Ms. Cheryl A. Pettry
P.O. Box 268
Bradenton Beach, Florida 34217
(w/o enclosures)